

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL SIMPSON,

Plaintiff,

-v-

LT. MICHAEL OVERBAUGH, et al.,

No. 9:15-CV-0180
(DNH/CFH)

Defendants.

APPEARANCES:

SUSSMAN & WATKINS
Attorney for Plaintiff
145 Main Street, 2nd Floor
Ossining, NY 10562

HON. ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for State Defendants
The Capitol
Albany, NY 12224

DAVID N. HURD
United States District Judge

OF COUNSEL:

MICHAEL A. DEEM, ESQ.

RYAN W. HICKEY, ESQ.
Assistant Attorney General

DECISION and ORDER

Plaintiff Michael Simpson brought this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1985(3). On September 28, 2015, the Honorable Christian F. Hummel, United States Magistrate Judge, advised by Report-Recommendation that defendants' partial motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (ECF No. 38) be granted. No objections to the Report-Recommendation were filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that:

1. Defendants' partial motion to dismiss (ECF No. 38) is **GRANTED** in its entirety¹;
2. All claims against defendants Annucci, Smith and Colvin are **DISMISSED**;
3. Plaintiff's due process claims against defendants Overbaugh and Oliver are

DISMISSED;

4. Plaintiff's conspiracy claim is **DISMISSED**;
5. Plaintiff's failure-to-intervene claims against defendants S. Owens, W. Owens, Nichols, Cuda and Klein are **DISMISSED**;
6. Plaintiff's claims of verbal harassment against S. Owens, W. Owens, Cuda, Catina and unnamed or John Doe corrections officers are **DISMISSED**; and it is further ordered that

7. The Clerk is directed to serve a copy of this Decision and Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.



United States District Judge

Dated: November 23, 2015
Utica, New York

¹The following claims remain: (i) the First Cause of Action (Excessive Force) against defendants Overbaugh, Catina, Nichols, W. Owens and John Does 1-25 and (ii) the Second Cause of Action (Failure to Intervene) against defendants Overbaugh, Catina, Oliver, Jane Doe, and John Does 1-25.